

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, <u>et al.</u>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action Number 96-1285 (RCL)
)	
GALE A. NORTON, Secretary of the)	
Interior, <u>et al.</u>,)	
)	
Defendants.)	
_____)	

ORDER

This matter comes before the Court on defendants’ motion to strike scandalous materials from plaintiffs’ response to defendant’s historical accounting plan for individual Indian money accounts [1795-1], which was filed on February 10, 2003. Rule 12(f) provides in relevant part that “upon motion made by a party within 20 days after the service of the pleading upon the party . . . , the court may order stricken from any pleading any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter.” It has been observed by well-respected commentators that

[t]he court possesses considerable discretion in disposing of a motion to strike redundant, impertinent, immaterial, or scandalous matter. However, because motions to strike on these grounds are not favored, often being considered ‘time wasters,’ they usually will be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties.

5A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1382 (2d ed. 1990) (citing cases) (footnotes omitted). In relation to material alleged to be “scandalous” in nature, the same authorities have explained that “[i]t is not enough that the matter offends the

sensibilities of the objecting party if the challenged allegations describe acts or events that are relevant to the action” and that “[t]he granting of a motion to strike scandalous matter is aimed, in part, at avoiding prejudice to a party by preventing a jury from seeing the offensive matter or giving the allegations any other unnecessary notoriety. Of course, if the complaint will not be submitted to the jury, or if the case will be tried to the court, . . . there is less need to strike scandalous allegations.” Id. (citing cases) (footnotes omitted).

In a recent case, United States v. Property Identified as Lot Numbered 718, 983 F. Supp. 9, 13 (D.D.C. 1997), this Court denied a motion to strike allegedly scandalous material from the government’s response to an affidavit, observing that

it was hardly “scandalous,” Fed.R.Civ.P. 12(f), “bear[ing] no possible relationship to the controversy.” Talbot v. Robert Matthews Distributing Co., 961 F.2d 654, 664 (7th Cir.1992). Indeed, [the] motion to strike must be denied because it commits the equally objectionable sin of frivolity.

These observations apply equally to defendants’ motion. Accordingly, it is hereby

ORDERED that defendants’ motion to strike [1795-1] be, and hereby is, DENIED.

SO ORDERED.

Date: _____

Royce C. Lamberth
United States District Judge